paying the amount over to the creditors. And yet if they are not so held, the bankrupt will receive, according to reasonable inferences, about $45,554.00, or $4,555.00 annually, this of course subject to failure to renew and keep up policies. Under such a holding, the income of the bankrupt derived from commissions earned before bankruptcy (contingent though they were), would be withheld from the just claims of creditors. Compensation for services rendered by bankrupt will be apportioned between the assignee and the bankrupt in proportion to the services rendered before and after bankruptcy, where payment was not contingent on full performance. *In re Jones,* Fed. Cas. 7, 448. Where, under a speculative contract, the bankrupt was to share in the profits, his interest in the venture passes to his assignee. *Sherman* v. *International Bank,* Fed. Cas. 12, 765. Where A had rendered services to B, for which B was to pay him in case he won a certain suit in chancery, and prior to the determination of the suit A became bankrupt, the claim passed to his assignee in bankruptcy. *Burton* v. *Lockert,* 4 Ark. (4 Eng.) 411. But see *In re McAdam,* 3 Am. B. R. 417. The fact that commissions are uncertain does not affect the validity of the assignment. *Knevals* v. *Blauvelt,* 82 Me. 458, 19 Atl. 818.

BANKRUPTCY — PROPERTY HELD UNDER CONDITIONAL SALE — RIGHT TO RECLAIM.—A bankrupt corporation had in its possession certain machinery held under a rental contract, by which it was to pay a certain sum in rental installments, after which it had the privilege of purchasing it for one dollar. Meantime the title was to remain in the lessor, who reserved the right to declare a forfeiture for non-payment of rent, time being made of the essence of the contract. The lessee paid some installments at maturity, others after they were due, while others were unpaid at the time of bankruptcy, but the lessor declared no forfeiture. After bankruptcy the lessor claimed the property, but the receiver, within a week thereafter, tendered the amount due, with interest, and one dollar additional, tender being refused. *Held,* that the lessor's failure to insist on a forfeiture for default in payment of rent suspended, if it did not waive, the provision making time of the essence of the contract, and could not be enforced against the trustee in bankruptcy. *In re Palatable Distilled Water Co.* (1907), — D. C., E. D., Pa. —, 154 Fed. Rep. 531.

The court did not mention the provisions of the Bankruptcy Act, 1898, §§ 67a and 67b, which provide for the recording of claims, etc., but based its decision on the failure to declare a forfeiture; and it does not appear from the case whether the sale was recorded or not. Under a New Jersey statute, which provided that every contract for the conditional sale of goods actually delivered should be absolutely void as against judgment creditors not having notice thereof, unless such conditional contract were recorded, it was held that property in possession of such purchaser under a contract unrecorded at the time of bankruptcy is property which he could have transferred, and so passes to his trustee. *In re Franklin Lumber Co.,* 147 Fed. Rep. 852. Following the New York courts in their interpretation of the N. Y. chattel mortgage statute, the Circuit Court of Appeals ruled that only such creditors as are

armed with some legal process can take advantage of a failure to comply with the statute, and enforce their lien. *In re N. Y. Economical Printing Co.*, 6 Am. B. R. 615, 110 Fed. Rep. 514, 49 C. C. A. 133. The result of this holding led the court to the conclusion that if only one creditor were armed with some legal process, the trustee could avoid the conditional sale only as to that one, and the vendor could reclaim the property despite the provisions of the Bankr. Act, referred to supra. Quaere: Is not the trustee a creditor armed with some legal process, and so able to avoid the sale as to all the creditors? But see *In re Pekin Plow Co.*, 7 Am. B. R. 369, 112 Fed. Rep. 308, 50 C. C. A. 257, where the court held that the term "creditor using the courts of law and their processes" includes all creditors, and so an unrecorded conditional sale was invalid against all creditors as well as the trustee. Where the vendor could recover chattels for the non-performance of the contract of sale, the assignee must deliver them to the vendor upon his petition. *In re Pusey*, Fed. Cas. 11, 477. But the assignee may pay the balance due from the bankrupt on a conditional sale and get title. *In re Lyon*, Fed. Cas. 8, 644. A lien for the price, retained by the vendor upon a conditional sale of chattels, is good against the assignee in insolvency of the conditional vendee, although the statutory affidavit was not made upon the written memorandum of the lien, as required by statute. *Adams* v. *Lee*, 64 N. H. 421, 13 Atl. 786.

BANKS AND BANKING—USURY LAWS—NOTES PURCHASED IN GOOD FAITH—POWER OF CONGRESS TO REGULATE NATIONAL BANKS.—Two promissory notes executed by the defendant, payable to his own order, and delivered by a blank indorsement to one Muirhead for a usurious consideration, were discounted by a state bank before maturity in due course and for value. In an action on the notes by a receiver of the bank it was *held* (CULLEN, C. J., WERNER and HISCOCK, JJ., dissenting), (1) that usury between the original parties was not available as a defense, and (2) that the National Banking Act, Rev. St. U. S., §§ 5197, 5198, limiting the rate of interest national banks may charge, and providing for a forfeiture of all interest for usury, and superseding all state laws on the subject of usury as applied to such banks, is a valid exercise of the power of Congress. *Schlesinger* v. *Gilhooly* (1907), — N. Y. —, 81 N. E. Rep. 619.

The court reasoned that since Rev. St. U. S., §§ 5197, 5198, limits the rate of interest national banks may charge, and provides that the knowingly charging a greater rate shall forfeit all the interest, and Laws 1870, p. 437, c. 163; Laws 1892, p. 1869, c. 689, § 55, as amended by Laws 1900, p. 668, c. 310, § 1, make similar provision as to state banks, etc., declaring an intent to place them on a parity with national banks as to usury, the conclusion must be reached that as no penalty is imposed for the bona fide purchase by a bank of a note void for usury as between the original parties, and the only penalty is when the bank acts knowingly, usury is not available as a defense against a bank which is an innocent holder in due course of paper which in the hands of private parties would be void for usury in its inception. The theory upon which this decision is based is that the Rev. St. (1st Ed.), pt. 2, p. 772, c. 4, §§ 2, 5 (Laws 1837, p. 486, c. 430, § 1), making void all usurious notes, etc.,